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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

)
Amendment of the Commission's)
Rules to Establish New Personal)
Communications Services)

General Docket No. 90-304
ET Docket No. 92-100

DOCKET FILED
90-304
ORIGINAL

To: The Commission

**RESPONSE TO
EMERGENCY PETITION**

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Dated: September 15, 1993

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of)	
)	
Amendment of the Commission's)	General Docket No. 90-314
Rules to Establish New Personal)	ET Docket No. 92-100
Communications Services)	
)	

To: The Commission

**RESPONSE TO
EMERGENCY PETITION**

The American Petroleum Institute ("API"), by its attorneys, hereby submits this Response to the Emergency Petition ("Petition") of Apple Computer, Inc. ("Apple") in the above-referenced proceeding.^{1/} This response addresses API's concerns with Apple's proposal to set aside spectrum in the band 1850-1990 MHz as a "temporary reserve" to accommodate fixed microwave licensees who are displaced by early deployment of PCS systems.

I. BACKGROUND

1. API is a national trade association representing approximately 300 companies involved in all aspects of the oil and gas industries, including

^{1/} Emergency Petition of Apple Computer (September 13, 1993).

exploration, production, refining, marketing and pipeline transportation of petroleum, petroleum products and natural gas. API's member companies operate hundreds of point-to-point microwave systems in the Private Operational-Fixed Microwave Service ("OFS") which support the search for and production of oil and natural gas, and which also enhance the safety of pipeline transportation of natural gas, crude oil and refined petroleum products. Accordingly, API has participated in these proceedings since their inception. The issues raised by Apple are of extreme concern to API.

2. API is adamantly opposed to the plan advanced in Apple's Petition to set aside two or more 10 MHz reserve channels in the band 1850-1990 MHz to provide a temporary five-year relocation area for displaced incumbent OFS licensees. This proposal is untenable and its advancement at this stage of the PCS proceeding is naive and ill-advised. Accordingly, the Commission must reject this "eleventh hour" attempt by Apple to insert its "repacking" plan into the PCS proceeding.

II. THE EMERGENCY PETITION MUST BE DISMISSED

A. Apple's Petition Is an Attempt to Circumvent Well Settled Administrative Principles and It Must be Rejected.

3. Apple's Petition is an irresponsible attempt to circumvent Commission procedures. The positions presented in Apple's Petition

previously have been reviewed and largely rejected by the Commission in the 2 GHz spectrum reallocation proceeding.^{2/} Apple notes that it has filed a Petition for Reconsideration of the Commission's decision, but asserts that the rules adopted in the Third R&O will affect the outcome of the PCS deployment rules which Apple expects the Commission will adopt later this month.^{3/}

Apple's attempted use of an "emergency petition" to advance its repacking plan through the PCS proceeding can only be viewed as an effort to circumvent well settled procedures for the implementation of administrative rules.

Provided the Commission announces its PCS rules, as expected, at its September meeting, the timing of the Petition precludes an adequate period for comment by other interested parties. This is particularly alarming since the OFS systems affected by the Commission's PCS decision are critical to the public safety. Moreover, Apple's proposals are insufficiently developed in the Emergency Petition to allow reasonable analysis and comment by interested parties prior to the adoption of regulations in the PCS proceeding.

Accordingly, Apple's filing of the Emergency Petition is a ill-considered attempt to circumvent Commission procedures in a manner detrimental to the public interest, in order to further Apple's short-term financial interests.

Accordingly, the Commission should reject Apple's arguments or, alternatively, should defer further review of Apple's position to the Agency's

^{2/} Third Report and Order and Memorandum Opinion and Order ("Third R&O") ET Docket No. 92-9, 58 Fed. Reg. 46547 (Sept. 2, 1993).

^{3/} Petition at 1.

review of Apple's Petition for Reconsideration filed in the 2 GHz reallocation proceeding.

B. Imposition of the Apple Repacking Proposal is Unwarranted.

4. Apple's Petition provides no additional information or support for its repacking plan beyond that previously rejected by the Commission for all OFS licensees except those grandfathered public safety microwave links now operating in the 1910-1930 MHz range.^{4/} API realizes that potential "mobile to fixed" microwave interference problems coupled with incumbent migration costs will create temporary difficulties for unlicensed PCS interests. Nonetheless, the proposal to set aside additional spectrum for temporary repositioning of displaced OFS licensees will create additional migration difficulties, and provide little in the way of actual benefit to unlicensed PCS interests. Furthermore, by seeking additional spectrum for unlicensed operations Apple only greatly magnifies the problem since hundreds of additional microwave systems will be affected. API believes Apple's approach is unrealistic and short-sighted, and must be rejected.

5. API is convinced that the vast majority of incumbent OFS licensees will act reasonably and in accord with the transition plan adopted by

^{4/} Third R&O at 12.

the Commission in the 2 GHz reallocation proceeding. The plan adopted by the Commission, while creating hardships for incumbent licensees, should provide in most instances a "minimally adequate" time frame necessary for rational planning and migration of OFS links which are vital to protect the public safety. API agrees with the Commission that the timetable adopted will allow an orderly transition while allowing expeditious deployment of new technologies. Accordingly, API also agrees with the Commission that the slight delay in deployment of unlicensed PCS system necessitated by the transition plan is an insufficient rationale upon which to order temporary "in band" relocation of OFS licensees.^{5/} Apple's proposal would trigger a difficult and costly "double migration" in an unrealistically shortened time frame. The administrative and logistical problems which are inherent in this plan are unnecessary and unacceptable.

6. Apple apparently operates under the assumption that rapid clearance of spectrum for unlicensed PCS could occur because only a simple equipment "change-out or adjustment" would be required for most OFS licensees to migrate to alternative frequency assignments in the 2 GHz range. Apple's proposal does not take into account the equipment change-out problems faced by incumbent licensees. A simple retuning move would not be possible in many instances since much of the equipment now deployed in fixed

^{5/} Id.

operations would require significant modification to make such a transition.^{6/} Moreover, it would be practically impossible to safely recoordinate a practically "instant migration" of several hundred fixed links from an unlicensed PCS frequency segment into alternative 2 GHz spectrum assignments. Planning and coordination required to perform such a massive and concurrent migration would be a practical impossibility and the potential harmful effects on the public safety are incalculable. Moreover, costs imposed by such a double migration plan will strain both the limited technical resources of incumbent licensees and the financial resources of PCS proponents. The slight advantage in unlicensed PCS deployment which might be realized through the Apple plan is more than outweighed by the administrative and technical burdens as well as compounded expenses which would be triggered by adoption of such a plan. Accordingly, the Apple proposal must be rejected.

III. CONCLUSION

7. The Emergency Petition of Apple is procedurally defective and represents a blatant attempt to circumvent Commission procedures and to gain adoption of Apple's spectrum repacking plan without an adequate provision for review and comment by those parties who would be most affected by such a scheme. Moreover, Apple's plan is impractical and would create greater

^{6/} See Comments of the American Petroleum Institute, General Docket No. 90-314 at 16-18 (June 21, 1993).

migration difficulties and expenses than could possibly be warranted by a potential small advancement in the unlicensed PCS deployment timetable. Accordingly, any further Commission consideration of Apple's position should occur during the Commission's review of Apple's Petition for Reconsideration filed in the 2 GHz spectrum reallocation proceeding and not, as Apple requests, in the instant PCS proceeding.

WHEREFORE, THE PREMISES CONSIDERED, the American Petroleum Institute respectfully requests the Federal Communications Commission to act in a manner consistent with the views expressed herein.

Respectfully submitted,

THE AMERICAN PETROLEUM INSTITUTE

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Dated: September 15, 1993

CERTIFICATE OF SERVICE

I, Terri Thomas, a secretary in the law firm of Keller and Heckman, do hereby certify that a copy of the foregoing Response to Emergency Petition has been served this 15th day of September 1993 by hand delivery to the following:

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